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No. \_\_\_\_\_

Supreme Court, U.S.

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IN THE  
SUPREME COURT OF UNITED STATES

October Term, 1990

J.J. BLONIEN & ASSOCIATES, INC. and  
CITY OF WEST ALLIS,

Petitioners,

v.

COMMUNITY NEWSPAPERS, INC. and  
ELSA R. SCHUPMEHL,

Respondents.

PETITION FOR WRIT OF CERTIORARI  
TO THE WISCONSIN COURT OF APPEALS  
DISTRICT I

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## QUESTION PRESENTED

Wisconsin law mandates that municipalities publish notice of matters of local governance in a newspaper meeting certain statutory eligibility requirements. The Wisconsin courts ruled that only newspapers which actually charge their readers a fee to receive copies are permitted by statute to print municipal notices.

The question presented is whether, under the Fourteenth Amendment, the State of Wisconsin may constitutionally prohibit publication of notice in a newspaper which does not charge its readers, thereby denying notice to citizens who cannot afford to pay a fee.

**LIST OF PARTIES**

The petitioner, J.J. Blonien & Associates, Inc., is a Wisconsin corporation and has no parent companies, subsidiaries or corporate affiliates. The petitioner, City of West Allis, is a municipal corporation of the second class formed within the municipal laws of Wisconsin.

In addition to the parties listed in the caption on the cover of this document, the Attorney General of Wisconsin was notified of the constitutional issues presented in the appeal as required by Wisconsin law but declined to participate.<sup>1</sup> (R-52)<sup>2</sup>

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<sup>1</sup>See, *Midwest Mutual Insur. Co. v. Nicolazzi*, 138 Wis.2d 192, 202, 405 N.W.2d 732 (Ct. App. 1987).

<sup>2</sup>Despite the fact that the record presently remains with the courts below, petitioners will continue to cite to the record as indexed for purposes of the appeal in the Wisconsin courts.

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**OPINIONS BELOW**

The Opinion of the Wisconsin Court of Appeals is reported as *Community Newspapers, Inc. v. City of West Allis*, 156 Wis.2d 350, 456 N.W.2d 646 (Ct.App. 1990); rev. denied \_\_\_\_ Wis.2d \_\_\_\_, 458 N.W.2d 532; and is reprinted in the Appendix, pages 101-17. The Order of the Milwaukee County Circuit Court, Case No. 88-CV-010195, (April 12, 1989), is reprinted in the Appendix, pages 118-28. The Order of the Wisconsin Supreme Court denying review, reported at \_\_\_\_ Wis.2d \_\_\_\_, 458 N.W.2d 532, is reprinted in the Appendix, pages 129-30.

## JURISDICTION

The United States Supreme Court has jurisdiction over this matter pursuant to 28 U.S.C. §1257(a), which permits review where a state statute has been challenged as repugnant to the United States Constitution.

The Wisconsin Court of Appeals, District I, rendered its opinion and decision on April 17, 1990. The Wisconsin Court of Appeals determined that it was constitutionally permissible to mandate notice publication only in newspapers which are purchased by readers and no others. Review is thus appropriate. *Orr v. Orr*, 440 U.S. 268, 274-75 (1979); *Raley v. Ohio*, 360 U.S. 423, 436-37 (1959).

The Wisconsin Supreme Court, Justice Abrahamson dissenting, denied review on June 12, 1990.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **Constitutional Provisions**

**Amend. XIV, sec. 1, United States Constitution**

provides:

**Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

### **Statutory Provisions**

**The statute at issue is Section 985.03(1)(a) of the Wisconsin Statutes. That statute provides:**

**985.03 Qualification of newspapers. (1)(a) No publisher of any newspaper in this state shall be awarded or be entitled to any compensation or fee for the publishing of any legal notice unless, for at least 2 years immediately before the date of the notice publication, the newspaper has been published regularly and continuously in the**

city, village or town where published, and has had a bona fide paid circulation:

1. That has constituted 50% or more of its circulation; and,

2. That has had actual subscribers at each publication of not less than 1,000 copies in 1st and 2nd class cities, or 300 copies if in 3rd and 4th class cities, villages or towns.

Also involved are Wis. Stats. §985.01:

(2) The term "legal notice" is every notice required by law or by order of a court to be published in a newspaper and includes:

a) Every publication of laws, ordinances, resolutions, financial statements, budgets and proceedings intended to give notice in an area;

b) Every notice and certificate of election, facsimile ballot, referenda, notice of public hearing before a governmental body, and notice of meetings of private and public bodies required by law; and

c) Every summons, order, citation, notice of sale or other notice which is intended to inform a person that he may or shall do an act or exercise a right within a designated period or upon or by a designated date.

...

(4) "Proceedings", when published in newspapers, mean the substance of every official action taken by a local governing body at any meeting, regular or special.

and also Wis. Stats. §985.02(1):

Except as otherwise provided by law, a legal notice shall be published in a newspaper likely to give notice in the area or to the person affected. Whenever the law requires publication in a newspaper published in a designated municipality or area and no newspaper is published therein publication shall be made in a newspaper likely to give notice.

### STATEMENT OF THE CASE

The petitioner, J.J. Blonien & Associates, Inc., ("Blonien") is a publishing company located in West Allis, Wisconsin, a small suburban city of about 64,000 inhabitants<sup>3</sup> located outside of Milwaukee. Blonien publishes a weekly newspaper for circulation to about 25,000 homes in West Allis, which is entitled the *West Allis Enterprise*. (R-39) A rival weekly newspaper entitled the *West Allis Star* is published by the respondent, Community

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<sup>3</sup>See, *Wisconsin Blue Book*. 1987-88, p.721.

Newspapers, Inc. ("Community"), with a weekly circulation of about 4,000 to 5,000. (R-35)

The case arose in 1988 when the petitioner, City of West Allis ("City"), accepted Blonien's lower bid for the 1988-89 annual contract to print its municipal notices. Under Wisconsin law, the City must publish all notices as defined in Wis. Stats. §985.01(2). For most Wisconsin municipalities, this publication requirement cannot be satisfied by posting or by publication through any other media. Rather, municipal notices may only be published in a newspaper meeting the statutory qualifications in Wis. Stats. §985.03(1) or a daily \$100 fine may be imposed pursuant to Wis. Stats. §985.03(2). Further, as a second class city, the City must invite bids from

eligible newspapers for printing its notices and award the printing contract to the lowest bidder.<sup>4</sup>

In April of 1988, as required under Wisconsin law, the City invited bids for the annual printing contract. Blonien submitted a bid of \$4.95 per column inch to print the City's notices in the *West Allis Enterprise*. Community submitted a bid of \$5.50 per column inch to print the City's notices in the *West Allis Star*. (R-51) After the City awarded the contract to Blonien as the lowest bidder, Community brought suit in Milwaukee County Circuit Court for declaratory judgment and injunctive relief.<sup>5</sup> (R-1)

Community alleged that Blonien's newspaper, the *Enterprise*, did not meet the requirements of Wis.

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<sup>4</sup>See, Wis. Stats. §985.06

<sup>5</sup>Community eventually added a West Allis taxpayer and the mother of one of its attorneys, the Respondent Elsa R. Schupmehl, as a plaintiff in the suit. (R-27,40)



Stats. §985.03(1)(a). Specifically, Community alleged that the *Enterprise* was not qualified to print notices because West Allis residents do not pay a fee to receive copies of the *Enterprise*. Rather, circulation is paid for entirely by the advertisers as part of Blonien's circulation policy and, thus, the *Enterprise* is circulated by carrier to all consenting West Allis households without charge. Free home delivery is guaranteed to all who wish to receive the *Enterprise* within West Allis.<sup>6</sup> (R-39)

In contrast, Community charges a fee for receipt of the *Star*. Claiming that Community was thus the only qualified bidder under the statutory qualifications, respondents moved for partial summary judgment voiding the contract between

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<sup>6</sup>Persons who reside outside of the West Allis delivery area do pay a fee to receive the newspaper.

Blonien and the City and awarding the contract to Community. (R-30) On their motion, respondents stipulated that the *Enterprise* was a newspaper as defined in the Wisconsin Statutes.<sup>7</sup> (R-31) Respondents also acknowledged that the costs of creating and circulating newspapers are largely covered by revenue received from advertisers. (R-49)

The dispute rested on the legal consequences of the fact that the *Enterprise* was generally available to all West Allis residents without charge and the *Star* was generally available only for a fee. (R-31,49) The petitioners argued in defense that the statutory interpretation pressed by the respondents, which would effectively withhold notice of matters affecting local self-government from citizens who could not

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<sup>7</sup>See, Wis. Stats. §985.03(1)(c).

pay, was not consistent with the constitutional principles of equal protection and due process set forth in the Fourteenth Amendment. (R-38,41)

Nonetheless, Circuit Judge Russell W. Stamper of the Milwaukee County Circuit Court construed the statute at issue to require that a newspaper charge at least half of its readers a fee in order to be eligible to print municipal legal notices. The trial court concluded that a newspaper delivered to all households without charge is, for that reason alone, not permitted to contract with a municipality to print its notices. The trial court then granted the respondents' motion for partial summary judgment but rejected their request to mandate an award of the contract to Community. (Ap.127-28) The trial court did not address the constitutional questions.

Blonien appealed to the Wisconsin Court of Appeals. On appeal, Blonien again raised the constitutional challenge, being adversely affected by the trial court's interpretation of the statute both as a West Allis publisher desiring to compete for the City's legal advertising and as a West Allis taxpayer.<sup>8</sup> (R-39)

Concluding that a newspaper must have "paying subscribers" in order to qualify as a legal notice medium, the Court of Appeals ruled that the statute as construed was constitutional. The Court of Appeals acknowledged that the ability to pay may not be used as a criterion for the exercise of fundamental political rights. Nonetheless, the Court of Appeals determined that it was constitutionally

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<sup>8</sup>See, e.g., *Thompson v. Kenosha County*, 64 Wis.2d 673, 221 N.W.2d 845 (1974); *U.S. v. SCRAP*, 412 U.S. 669, 689 n.14, (1973).

permissible to require citizens, in effect, to purchase the notice indispensable for the exercise of such rights because no citizen was actually precluded from voting based on the inability to pay. (Ap.112-17) Although notices involve public hearings, municipal proceedings and similar matters as well as elections, the Court of Appeals never examined the impact of the law on other fundamental political rights of local self-government such as the right to petition and the right to associate politically.

Upon receipt of the adverse decision of the Wisconsin Court of Appeals, Blonien petitioned the Wisconsin Supreme Court for discretionary review. Review was denied by Order, dated June 12, 1990, with one dissent. (Ap. 129-30)

**REASONS FOR GRANTING THE PETITION**

- I. **REVIEW IS WARRANTED BECAUSE THE CASE PRESENTS IMPORTANT CONSTITUTIONAL QUESTIONS TOUCHING UPON FUNDAMENTAL POLITICAL RIGHTS.**
- A. *The Wisconsin Court's Decision Means, In Effect, That Wisconsin Citizens Must Pay A Fee To Receive The Notice Essential To The Exercise Of Their Fundamental Rights.*

This case involves important constitutional considerations of first impression regarding the publication and accessibility of public or "legal" notice to state citizens. These notices involve rights which form the very foundation of our political system of self-government: the right to vote, the right to associate politically, and the right to petition. Unless changed by this Court, it is now established law in Wisconsin that a municipality must discriminate against its poorer constituents by giving notice of *inter alia*, elections, referenda, municipal

meetings, and public hearings only to those who can afford to buy a newspaper.<sup>9</sup>

In the view of the Wisconsin courts, Wis. Stats. §985.03(1)(a) requires Wisconsin municipalities to publish such notices only in newspapers which charge the ultimate recipients a fee. In effect, then, the intended recipients of legal notice must buy it from a private publishing entity. Yet, their tax dollars are already being expended to *give* notice.

The state law at issue implicates substantive and procedural due process in matters affecting "life, liberty and property" under the Fourteenth Amendment. Petitioners submit that access to public affairs and notice is a liberty interest protected by the due process clause. However, where discrimination occurs against a class of persons similarly

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<sup>9</sup>See, Wis. Stats. §985.01(2) *infra.* at page 4.

situated, these due process principles really fall within the purview of the equal protection clause of the Fourteenth Amendment. *Ross v. Moffitt*, 417 U.S. 600, 609 (1974).

— The equal protection clause prohibits states from imposing fee requirements which impede the exercise of fundamental rights by the less-affluent. Classifications based on wealth are "traditionally disfavored" when they burden citizens' fundamental political rights. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 666-68 (1966), a case voiding an annual \$1.50 poll tax because even a minimal price on the franchise, once granted by a state, constituted an invidious wealth discrimination.

**1. Notice is essential to the right to vote.**

Notice is vital to the right to vote. The right to vote in a free and unimpaired manner is



preservative of other basic civil and political rights. *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964). Any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. *Id.* In Wisconsin, "[V]oting is a constitutional right, the vigorous exercise of which should be strongly encouraged." Wis. Stats. §6.84.

It seems elementary that citizens cannot exercise their right to vote without the requisite knowledge of when, how, and where to vote and what they may be voting on. In recognition of that fact, specific laws with respect to notice of the dates and times of elections, facsimile ballots, referenda, and absentee voting for the aged and disabled, among others, are carefully incorporated into the election laws of Wisconsin.<sup>10</sup> Yet, these same notice

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<sup>10</sup>See, Wis Stats. §10.01, *et seq.*

laws are subject to the newspaper eligibility requirements of Wis. Stats. §985.03(1)(a). Thus, if the Court of Appeals' decision is permitted to stand, the notice critical for the exercise of the franchise is available only to those who can afford to purchase it.

**2. Notice is essential to the rights of petition and association.**

The right to vote is closely related to the fundamental rights of political association found in the First Amendment. See, e.g., *Anderson v. Celebrezze*, 460 U.S. 780 (1983) (access to ballot of independent political parties); *William v. Rhodes*, 393 U.S. 23 (1968) (right to associate for advancement of political beliefs).

The First Amendment right to petition is "among the most precious of the liberties guaranteed by the Bill of Rights." *Mine Workers v. Illinois Bar*

*Assoc.*, 389 U.S. 217, 222 (1967). The values in the right of petition "as an important aspect of self-government are beyond question." *McDonald v. Smith, N.C.*, 472 U.S. 479, 483 (1985).

At the local level, it has been recognized that citizens are most directly involved in the exercise of self-government and political organization. *Ortiz v. Hernandez Colon*, 385 F. Supp. 111, 116 (Dt.Ct. P.R. 1974). Wisconsin recognizes this principle in its provisions for municipal home-rule, Wis. Const., Art. XI, §3, and for municipal "direct legislation" by petition, Wis. Stats. §9.20, a statute implementing legislative powers reserved by the people according to *State ex rel. Althouse v. Madison*, 79 Wis.2d 97, 118-19, 255 N.W.2d 449 (1977). These principles of open and participatory government are strongly expressed in Wisconsin's open meetings laws:

In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

Wis. Stats. §19.81(1), *et seq.*

The assumption that notice is essential to open and participatory government underlies the specific requirements for notice set forth in these laws.<sup>11</sup> Again, however, that notice may only be published in a newspaper which charges a fee to its readers. The fundamental rights of petition and political association, intimately linked with the power to vote, are impaired when the knowledge indispensable to their exercise is withheld. Their political

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<sup>11</sup>Direct legislation petitions, when submitted to a vote of the electorate, must be noticed by the city clerk. Wis. Stats. §9.20(5). Every meeting of a governmental body shall be preceded by notice. Wis. Stats. §19.83.

effectiveness is entirely dependent on notice. Yet, only those who pay a fee to a private publisher are presently deemed entitled to receive notice under Wisconsin law.

***B: Although Notice Is Indispensable To The Democratic Process, The Right To Receive Notice Without Charge Appears To Be An Issue Of First Impression In The Courts.***

Every citizen has an inalienable right to an opportunity for full and equally effective participation in the political processes of the state's legislative bodies. *Reynolds*, 377 U.S. at 565-6. The Wisconsin Court of Appeals agreed that the opportunity for equal participation "is a *sine qua non* to a citizens' role in the affairs of government." (Ap. 112) The Court of Appeals would not acknowledge, however, that notice is necessary to have that opportunity. It is meaningless to describe the rights

essential to political participation as fundamental precepts of liberty and not to acknowledge a correlative right to a meaningful opportunity to obtain the information indispensable for the exercise of such rights.

While no case that we could find has specifically addressed this issue, the proposition that citizens have a right to notice seems so basic as to not require expression. The purpose of "notice" is to provide:

...information, an advice, or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate.

*Record Publishing Co. v. Kainrad*, 49 Ohio St.3d 296, 551 N.E.2d 1286 (Ohio 1990), citing *Black's Law Dictionary* (5 Ed. 1979) 957. Surely, the "right to

know" is as much a part of the rights to vote, petition and associate as the right to form political parties or to appear on the ballot.

Similarly, notice is as vital to a citizen's interest in liberty as it is to a creditor's interest in property. Yet, most notices affecting property interests require mailing and/or personal service in order to comply with due process. See, e.g., *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Tulsa Collection Services v. Pope*, 485 U.S. 478 (1988). This is because the "right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane*, 339 U.S. at 314. Likewise, the right to vote or to petition or to associate has "little reality or

worth unless one is informed" of the matter that is pending. *Id.*

Of course, the issue here has never been whether a municipality must provide actual notice by mail or personal service to each of its citizens. Rather, the issue is whether its citizens must pay a fee to receive notice. A municipality might not be required to mail or serve actual notice to individuals for reasons of economy and efficiency. However, this is not a valid reason for requiring citizens to pay a fee to a private publishing entity to receive notice. Notice should at least be available to all without regard to the ability to pay.

Petitioners submit that the Constitution requires a meaningful opportunity to obtain the necessary information for the effective exercise of political rights. It requires more than telling citizens



to search out the information at the library. Yet, the Wisconsin Court of Appeals' ruling permits more rights to a creditor than to a voter, particularly an impoverished voter.

## **II. THE WISCONSIN COURT'S DECISION CONFLICTS WITH PRINCIPLES ESTABLISHED BY THIS COURT REGARDING IMPERMISSIBLE WEALTH-BASED DISCRIMINATION.**

### **A. *This Court Has Continuously Protected Access To the Political Process By Striking Fee Requirements Which Impede The Exercise Of Fundamental Rights.***

While no case specifically deals with the question here, this Court has consistently held invalid wealth-based classifications which interfere with various fundamental rights. See, e.g., *Shapiro v. Thompson*, 394 U.S. 618 (1969) (right to interstate travel); *Douglas v. California*, 372 U.S. 353 (1963); *Harper, supra.* (right to vote); *Bullock v. Carter*, 405

U.S. 134 (1972) (right to vote for the candidate of one's choice); *Lubin v. Panish*, 415 U.S. 709 (1974) (right to appear as candidate on a ballot). Wealth burdens on fundamental rights are subject to strict scrutiny, *i.e.*, there must be a showing that the wealth classification is necessary to achieve a compelling state interest. *Bullock*, 405 U.S. at 143-44.

In addition to rejecting the poll tax and ballot access fees, this Court has struck down property-holder requirements. A Louisiana statute permitting only property taxpayers to vote in local bond referenda was subject to strict scrutiny and held to be a violation of equal protection in *Cipriano v. Houma*, 395 U.S. 701 (1969). Accord: *Hill v. Stone*, 421 U.S. 289 (1975) and *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970). Likewise, in *Kramer v. Union Free School District No. 15*, 395 U.S. 621

(1969), the Court held unconstitutional a law permitting only property owners and parents to vote in school district elections. The State of Georgia could not constitutionally require property ownership as a qualification for a seat on a county board of education. *Turner v. Fouche*, 396 U.S. 346 (1970).

In numerous cases, the Court has followed the principle that a person's "mere property status cannot be used by a state to test, qualify, or limit his rights as a citizen." *Edwards v. California*, 314 U.S. 160, 184 (1941). Whether paltry or prohibitive, whether directly or indirectly, any fee imposed by a state which burdens effective participation in the political process violates equal protection. Just as wealth may not be a criterion for the actual exercise of a right, it should not be a criterion for the receipt of the notice necessary to exercise the right. In

either instance, less affluent citizens are precluded from free and equally effective participation based solely on their inability to pay. In following the principles set forth in *Turner, supra.*, and *Harper, supra.*, it has been stated:

Limiting at any level the rights of members of the community to participate in the political process because of their economic station in life offends our most basic understanding of the nature of our government and society.

*Woodward v. City of Deerfield Beach*, 538 F.2d 1081, 1083 (5th Cir. 1976). Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government. *Kramer*, 395 U.S. at 626.

***B. The Wisconsin Court Of Appeals Erred In Refusing To Acknowledge The Impact Of A Fee Requirement On Fundamental Rights.***

The impact of a fee system limiting participation in the political process must be carefully examined. *Bullock*, 405 U.S. at 142-3. The ballot access fee at issue in *Bullock*, while not precluding anyone from voting, nonetheless fell with unequal weight on voters "according to their economic status" and deprived them of the opportunity to vote for the candidate of their choice. *Id.* at 144. The Wisconsin Court of Appeals, while recognizing that a state may not impede fundamental rights because of distinctions based on wealth, erroneously believed that no fundamental rights are contingent on wealth in this matter.

It should be noted that there is no statutory limit on the amount a newspaper may charge for a

single copy or for a subscription. The Wisconsin statute does not specify what may be charged so long as the charge is more than zero. Nothing precludes the publication of notice in a business or law reporter which is prohibitively expensive for certain segments of the public.<sup>12</sup> Nonetheless, even a small sum can have the same effect and is equally suspect. *Harper*, 383 U.S. at 666, 670.

Such a law can be used to frustrate rights in ways similar to poll taxes and property-holder requirements. Its impact is neither remote nor incidental to the exercise of fundamental political rights. It falls with unequal weight on voters according to their economic status. The Wisconsin Court of Appeals refused to recognize the similarity.

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<sup>12</sup>Such publications are deemed newspapers under Wis. Stats. §985.03.

Instead, it concluded, contrary to the reasoning in *Bullock*, that strict scrutiny should not be applied because no citizen was theoretically prohibited from voting. It then speculated that a purchased newspaper is more likely to be read.<sup>13</sup>

In this case, however, Blonien's newspaper is circulated to 25,000 households in a community of about 64,000 inhabitants. By contrast, Community's newspaper is circulated to only a few thousand households in this community. Surely, Blonien's newspaper, which is distributed to all who want it without charge, is more "likely to give notice"

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<sup>13</sup> Applying the rational basis test, the Court of Appeals decided, based not on the facts before it but rather on "common experience", that a purchased newspaper is more likely to be read and to contain news of general interest. Yet, the expressed intent of the statute is to "*give* notice", not to restrict notice solely to those who are "more likely" to read it.

consistent with that purpose as set forth in Wisconsin notice law and with constitutional principles.<sup>14</sup>

In addition, it should be noted that such a law is anticompetitive. Blonien is Community's only potential competitor for the City's legal notice contract.<sup>15</sup> (R-39) Thus, rather than serving any fiscal purpose, the statute thwarts competition by permitting a municipality no recourse but to publish in a monopoly newspaper. In these days when it is important for governmental units to minimize their costs, the state courts' ruling has a significant adverse impact on their ability to do so. The effect of these newspaper eligibility requirements is to limit

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<sup>14</sup>See, Wis. Stats. §985.02(1) *infra*. at page 4.

<sup>15</sup>Wis. Stats. §§985.01(5), 985.06 and 985.065 lay out the various bidding requirements for legal notice printing contracts. Section 985.06 also requires notice publication in a newspaper published in the municipality. The *Enterprise* and the *Star* are the only two newspapers which presently are or claim to be published within the City of West Allis. (R-39)



the reach of notice and subsidize one group of privately-owned newspapers, all at greater expense to the public.

According to the Wisconsin Court of Appeals, those who have the discretionary income to buy the sanctioned newspaper are entitled to receive the vital information affecting their participation in the affairs of their local government; those who do not should search it out at the library. Rather than achieve any kind of compelling or rational purpose, such a distinction serves only to frustrate statutory and public policy objectives with the fiscal consequences falling on the over-burdened taxpaying public. Such a distinction inhibits and dilutes the voice of the less-affluent in their local governance and cries for review by this Court.

**CONCLUSION**

Because this case presents important constitutional issues, the petitioners respectfully request this Court to review the Wisconsin Court of Appeals' decision. We respectfully submit that the Court should review whether it is constitutional for a state to force its citizens to pay a fee to a private entity in order to obtain the notice prerequisite to their effective participation in local self-government.

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